

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Fibertech Networks, LLC, Petition for Rulemaking	)	RM-11303
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**OPPOSITION OF THE UNITED STATES TELECOM ASSOCIATION**

The United States Telecom Association (USTelecom)<sup>1</sup> files this opposition in response to the Federal Communications Commission's (FCC's or Commission's) Public Notice in the above-referenced docket.<sup>2</sup> For the reasons set forth below, the Commission should deny the Petition for Rulemaking of Fibertech Networks.<sup>3</sup>

**DISCUSSION**

**I. The Commission Should Deny The Fibertech Petition.**

The Commission should deny Fibertech's Petition because: (1) Fibertech has not demonstrated that the current system of accessing the poles and conduit of incumbent local exchange carriers (ILECs) is broken; (2) the Commission already has in place rules on access to poles and conduits that are working as intended; and (3) the proposed rules, if implemented, would likely lead to a barrage of requests for rules that are tailored to accomplish a host of different desires from other companies seeking pole and conduit access.

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<sup>1</sup> USTelecom is the nation's leading trade association representing communications service providers and suppliers for the telecom industry. USTelecom's carrier members provide a full array of voice, data, and video services across a wide range of communications platforms.

<sup>2</sup> Public Notice, "Pleading Cycles Established for Petition for Rulemaking of Fibertech Networks, LLC," RM-11303, DA 05-3182 (rel. Dec. 14, 2005).

<sup>3</sup> See *Petition for Rulemaking of Fibertech Networks*, RM-11303 (filed Dec. 7, 2005) (Fibertech Petition).

The premise of the Petition filed by Fibertech is that the current rules governing pole and conduit access provide utilities and ILECs with too much latitude to use their processes to delay competitors' deployment of services and to impose unnecessary costs on new entrants.

However, Fibertech has not demonstrated with substantive evidence that utilities and ILECs are acting beyond the latitude provided to them by the Commission's rules or that they are abusing that latitude. In fact, the Commission's rules permit pole owners to deny, or condition, attachers' access to poles and conduit "for reasons of lack of capacity, safety, reliability or engineering standards."<sup>4</sup> The Fibertech Petition merely raises generalized, unsupported allegations on what Fibertech claims are unreasonable terms and conditions for access, none of which warrant a rulemaking.

Rather than resolve its alleged access problems through private negotiations, Fibertech asks the Commission to impose national rules that are tailor-made to address its specific needs. The Commission, however, has already contemplated the need for a comprehensive regime of detailed rules governing pole and conduit access and declined to enumerate such rules. The Commission chose to "establish a few rules supplemented by certain guidelines and presumptions that . . . [it believed would] facilitate the negotiation and mutual performance of fair, pro-competitive access agreements."<sup>5</sup> In addition, the Commission's broad rules and guidelines are designed to account for the significant variances among utility pole and conduit facilities across the nation. The Commission has already recognized the danger of adopting overly detailed rules and refused to establish a one-size-fits-all approach to pole and conduit

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<sup>4</sup> 47 C.F.R. § 1.1403(b).

<sup>5</sup> *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, 11 FCC Rcd 15499, 16068 (1996) (Local Competition Order).

access. USTelecom urges the Commission to take the same approach here and deny the requested rulemaking.

The Commission also must be mindful of the statutory limitations on access to poles and conduit. Section 224(f)(2) expressly permits a utility to deny access to a cable company or telecommunications carrier “where there is insufficient capacity and for reasons of safety, reliability and generally acceptable engineering purposes.”<sup>6</sup> The Commission’s rules mirror this statutory provision.<sup>7</sup> In adopting the rules governing the denial of access, the Commission explained “that the size, weight, and other characteristics of attaching equipment have an impact on the utility’s assessment of the factors determined by the statute to be pertinent – capacity, safety, reliability, and engineering principles. The question of access should be decided on those factors.”<sup>8</sup> Thus, if Fibertech has been denied access to poles and conduit on the basis of any of the issues prompting its rulemaking request, a pole or conduit owner would be acting well within both the statute and the Commission’s rules for issuing such a denial.

USTelecom addresses below some of the requests Fibertech has made to pole and conduit owners that it claims have resulted in denials of access or unreasonable terms and conditions imposed on access. As demonstrated more fully below, there are often statutorily permissible and valid reasons for denying or conditioning access.

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<sup>6</sup> 47 U.S.C. § 224(f)(2).

<sup>7</sup> The Commission’s rules state that “a utility may deny a cable television system or any telecommunications carrier access to its poles, ducts, conduits, or rights-of-way, on a non-discriminatory basis where there is insufficient capacity or for reasons of safety, reliability and generally applicable engineering purposes.” 47 C.F.R. § 1.1403(b).

<sup>8</sup> Local Competition Order, 11 FCC Rcd at 16085.

Fibertech claims that “[p]ole owners have prohibited CLEC use of boxing and extension arms to eliminate make-ready work and enable faster attachment at lower cost.”<sup>9</sup> It is important to recognize that the denial of the use of boxing and extension arms is not per se unreasonable. Such a denial may very well be legitimate and permitted by statute and Commission rule. For example, a double-sided attachment (or boxing) is hazardous for linemen who have to replace a pole because it is difficult and dangerous to set a joint pole between power lines that are spaced further apart than a pole’s width. Safety issues such as this are justifiable and permitted reasons for denying access. In addition, the primary purpose for use of a pole extension arm under engineering best practices is to sync up an out-of-line pole with other poles where guying (or anchoring) is not an option. However, when a pole extension arm is used to add space to a pole it creates unbalanced tension on the pole that then needs to be anchored in some way to compensate and relieve the tension. Attachments based on poor engineering practices such as this are also justifiable and permitted reasons for denying or conditioning access.

Fibertech also complains that “ILECs require ILEC supervision (at CLEC cost) of ILEC-approved contractors performing work in manholes when these contractors are working for CLECs.”<sup>10</sup> However, the option of ILEC supervision, or monitoring, is essential when competitors are performing work on poles or in manholes.<sup>11</sup> For example, ILEC inspectors are

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<sup>9</sup> Fibertech Petition at 11.

<sup>10</sup> *See id.* at 12.

<sup>11</sup> For work performed on poles, the monitoring consists of ensuring that CLEC facilities are placed as designed, that proper power and ground clearances are maintained, and that there is proper separation among all facilities in accordance with NESC guidelines. In a manhole environment, monitoring includes proper placement of work area protection around the manhole, traffic diversion if applicable, proper testing and ventilation of the manhole, and proper entry and exit of the manhole. ILECs have great reason to be concerned about work conducted in manholes due to the large capacity of services that manholes house. Specifically, fiber cables are

present at manhole sites in order to ensure that the CLECs' or cable providers' contractors are complying with safety procedures and not damaging the facilities of the utility or any other provider in the manhole. Notably, some ILECs have found competitors' contractors tying ropes off on the ILECs' aerial cable during construction of the competitors' fiber. Improper work procedures such as this endanger ILEC plant facilities and pose a risk to network reliability. Similarly, without supervision, competitors' contractors using improper work procedures may violate safety standards, leaving the ILEC unaware of the violation and unable to prevent harm to its personnel. Conditioning access on the presence of utility supervisors therefore is a legitimate and reasonable requirement.

In sum, the rules requested by Fibertech are very specific to the desires of one company seeking pole and conduit access. It is not difficult to imagine that there may be many other companies seeking access with very different desires. If the Commission entertains the requests of Fibertech through a rulemaking, it is likely that the Commission will be forced to entertain a host of specific and individualized requests from other companies. However, it is impractical to establish specific rules for all types of pole and conduit access. The Commission's policy against overly detailed rules governing pole and conduit access is reasonable and should be affirmed. As the Commission stated in the Local Competition Order, its "determination not to prescribe numerous specific rules is supported by acknowledgements in the relevant national industry codes that no single set of rules can take into account all of the issues that can arise in the context of a single installation or attachment."<sup>12</sup> As intended, the Commission's rules

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ILECs' primary source of critical services such as 911 service and interoffice exchange facilities. Mishandling or "stepping" on these cables could cause severe service outages.

<sup>12</sup> Local Competition Order, 11 FCC Rcd at 16068.

provide the basic framework for access and for resolution of disputes regarding denial of or conditions on access. Companies that own the poles and conduits and companies that seek access to those poles and conduits should work within that framework.

## **II. The Fibertech And USTelecom Petitions Are Distinguishable.**

The Commission should not join the Fibertech Petition with the USTelecom Petition<sup>13</sup> in a broad rulemaking proceeding on pole attachments nor should the denial of the Fibertech Petition impact the Commission's consideration of the USTelecom Petition. The Fibertech Petition seeks rules to address fact-specific complaints regarding pole and conduit access, whereas the USTelecom Petition seeks adoption of rules for the full implementation of the pole attachment provisions of the Telecommunications Act of 1996. The two petitions are entirely different in character and a denial of the Fibertech Petition should have no bearing on whether or not the Commission grants the USTelecom Petition.

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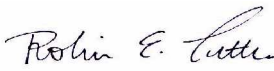
<sup>13</sup> See *Petition of the United States Telecom Association for a Rulemaking to Amend Pole Attachment Regulation and Complaint Procedures*, RM-11293 (filed Oct. 11, 2005).

**CONCLUSION**

The adoption of national rules is not the appropriate method for addressing the allegations raised in the Petition.

Respectfully submitted,

UNITED STATES TELECOM ASSOCIATION

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January 30, 2006

## **CERTIFICATE OF SERVICE**

I, Meena Joshi, do certify that on January 30, 2006, the aforementioned Opposition of The United States Telecom Association was electronically filed with the Commission through its Electronic Comment Filing System and electronically mailed to BCPI, at the address identified below, and mailed by U.S. Mail, first class, postage prepaid to Fibertech and its counsel, at the addresses identified below:

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